IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

First Appeal No. 1171 OF 2007
in
L.A.R. No. 191 of 1999

The State of Maharashtra)
at the instance of the Special Land Acquisition)
Officer, Scarcity No.1, Nashik.)..Appellant

versus

1. Smt. Fulyabai Kisan Govardhane)
2. Vishnu Kisan Govardhane)
3. Baburao Kisan Govardhane)
4. Deoram Kisan Govardhane)
5. Smt. Jijabai Kisan Govardhane)
6. Smt. Draupadabai Bhaskar Shinde)

Through GPA Holder No. 10,)
All R/o Sanjegaon, Tal. Igatpuri,)
Dist. Nashik)..Respondents

WITH

FIRST APPEAL NOS. 1172 TO 1250 OF 2007

WITH

CIVIL APPLICATION NOS. 2050 TO 2129 OF 2007

WITH

CIVIL APPLICATION NOS. 2631 TO 2710 OF 2007

Mr. K.K. Tated, Assistant Government Pleader, for the appellants in all

matters.
Mr M.S. Karnik for the respondents in all matters.
Mr. K.B. Sonwalkar for the Applicant/intervenor in Civil Application Nos. 2631 to 2710 of 2007.

CORAM: SWATANTER KUMAR, C.J.,&
DR. D.Y.CHANDRACHUD,J.

Judgment reserved on 7.8.2007
Judgment delivered on 23 .8.2007

JUDGMENT(PER SWATANER KUMAR, C.J.)

All the above 80 appeals have been preferred by the State against the judgment/award dated 31st March 2006 passed by 2nd Adhoc Additional District Judge, Nashik. As the appeals arise from the same judgment/award, they can conveniently be disposed of by a common judgment.

2. The facts giving rise to the present appeals fall in a narrow compass. The State of Maharashtra issued a Notification dated 2nd February 1994 under section 4 of the Land Acquisition Act, 1984, (hereinafter called the "Act") intending to acquire 265.54.39 hectares of land from the revenue village Sanjegaon, taluka Igatpuri, District Nasik, for public purpose, namely, for Mukane dam out of Nadurmadneshwar project. In furtherance to the above Notification the declaration under

section 6 of the Act was issued on 10th June 1994. After having provided opportunity to the parties to present their case before the Special Land Acquisition Officer (SLAO) he had pronounced his award dated 14th December 1995 and depending upon the quality of the land the SLAO granted varied compensation to the claimants at the rate of from Rs.40,000/- to Rs.1,11,000/- per hectare for Jirayat lands. Bagayat lands were assessed at 1.5. times the rate of Jirayat land.

3. Dissatisfied with the quantum of the compensation awarded the claimants preferred References under section 18 of the said Act. The parties led documentary and oral evidence in support of their claims. The claimants had claimed enhancement of compensation before the Reference Court primarily on the ground that the acquired land was situated on Mumbai Agra Highway, Taluka had been developed as a developed zone for industrial area, various industries had been established, the land was irrigated and grouping of the land into various classes by the SLAO was not justified. It was also their case that the land in question had industrial potential.

4. The State had also led evidence before the Reference Court

and had submitted that the claimants were not entitled to any enhanced compensation. The Reference Court vide its judgment/award dated 31st March 2006 enhanced the compensation and granted uniform compensation to the claimants at the rate of Rs.1.69,231/- per hectare for Jirayat land and Rs.2,11,539 per hectare for Bagayat land and Rs.84,616/- for Potkharab land.

5. Feeling aggrieved by this judgment, the State has come up before this Court in the above appeals praying for reduction of the amount of compensation awarded to the claimants and for restoration of the Collector's award. The claimants have not challenged the impugned judgment and have chosen not to file any Cross objections. At least none has been listed along with these appeals.

6. It would be appropriate to discuss the evidence which was produced by the parties before the Reference Court. The claimants had claimed compensation at the rate of Rs.3 lacs per hectare. As already noticed, according to the appellants, there was no justification for the Reference Court to award such higher compensation to the respondents and the compensation awarded is primarily excessive and is not based

on evidence. The documentary evidence in the shape of sale instances produced by the respective parties can be usefully referred at this stage itself.

Evidence produced by the State:

Dt. of Sale deed	Exh	Village	Area	rate per hectare
28.2.1992	140	Sanjegaon Gat No.777 paddy/grass land	0.45 Ares	Rs.40,000
14.2.1994	141	Sanjegaon Gat No.941	1.50 Hectare	Rs.32,666
17.7.1991	142	Sanjegaon Gat No.971/1 Jirayat land	85 Ares	Rs.15,882

Evidence produced by the Claimants:

Sale instances:

Dt of Sale deed	Exh	Village	Area	rate per hectare
4.7.1989	42	Sajegaon Gat No 810 Jirayat land	13 Ares	Rs.1,15,385
30.5.1990	124	Sanjegaon Gat No.516 Jirayat land	4.8 Ares	Rs 1,35,417
31.1.1995	129	Mukane Gat No.447A	60 Ares	Rs.2,12,500

Judgments relied upon by the Claimants:

L.R No 48 of 1997, sale deed dt. 4.7.1989 for Rs.15,000

L.R. No 588 of 1997, sale deed dt. 4.7.1989 for Rs.15,000

and L.R No.168 of 1999 sale deed dt. 2.4.94 for Rs. 1,27,500/-

7. Now we may discuss the effect of the evidence produced by the respective parties. The respondents have produced three sale deeds Exhs. 140, 141 and 142 respectively. As far as Exhibit 141 is concerned, that is a sale transaction relating to a period subsequent to the issuance of the notification under section 4 of the Act. As the notification was issued on 2.2.1994 and Exhibit 141 was executed on 14.2.1994, it may not be considered being post notification instance. As far as Exhibits 140 and 142 are concerned, they relate to the period prior to the date of notification and they are from the same village and can be considered by the court while determining the compensation payable to the claimants. However, their evidentiary value is hardly of any consequence as they cannot be relied upon by the court in proper determination of the compensation payable to the claimants, in as much as the sale consideration per hectare is much less than the

compensation awarded by the Collector himself. The court in any case cannot reduce the compensation to any amount lesser than the amount awarded by the Collector in view of Section 25 of the Act. The Collector, as already noticed, had awarded compensation at the rate between Rs.40,000 and Rs.1,11,000 per hectare depending upon the quality of the land. Resultantly, the evidence led by the State is of no help in determining the controversy.

8. The claimants produced, relied upon and proved Exhibits 42, 124 and 129 respectively in support of their claim for claiming higher compensation. As far as Exhibit 42 is concerned, this is a sale instance of 4th July 1989 relating to a sale of land admeasuring approximately 13 Ares. This is the sale instance, which is mainly relied upon by the Reference Court while awarding compensation. We would shortly revert back to the discussion on merits in relation to this piece of evidence. As far as Exhibit 129 is concerned, it is a sale instance of 31st January 1995 where 60 Ares of land was sold for a sum of Rs.2,12,500 per hectare. This evidence has been ignored by the Reference Court on the ground that it is much subsequent to the date of notification and that the land, subject matter of the said sale deed, was located in revenue estate

of village Mukhane which was not part of the acquired land under present award in question. We fully agree with the findings recorded by the Reference Court that Exhibit 129 is not comparable sale instance particularly in the face of the fact that comparable sale instances from the same revenue estate and the same village are available.

9. Exhibit 124 is another sale instance dated 30th May 1990 (which has been incorrectly referred by the Reference Court as Exh. 24 in the judgment, in fact, Exh. 24 is the electricity bill exhibited by the court), vide which the land from Gat No. 516 admeasuring O.4.8 Ares was sold for a consideration of Rs. 6,500/-, thus reflecting price of about Rs.1,35,417/- per hectare. This sale instance is closer to the date of notification than Exh. 42. The Reference Court was of the opinion that Exh. 124 could not be taken into consideration as the transaction is for a small piece of land.

10. While calculating the compensation payable to the claimants, the Reference Court, by referring to Exhibit-42, formed an opinion that the sale instance was genuine one and awarded compensation of Rs. 1,69,000/- per hectare for jirayat land, Rs. 2,11,539/- per hectare for

bagayat land and Rs. 84,616/- for pot kharab land. This figure was arrived at bye taking the sale consideration reflected in Exhibit-42 at Rs. 1,15,385/- per hectare as the base value and by giving them 10 per cent increase for the intervening period i.e. from the date of the sale deed dated 4th July, 1989 to the date of the notification i.e. 2nd February, 1994. This itself was treated as the basic price for fixing the compensation payable to the claimants of different kinds of lands. In the case of bagayat land he gave an additional increase of 25 per cent and in the case of pot kharab land he reduced 50 per cent from the basic rate fixed for jirayat land. Challenge to this computation is that the whole consideration is based upon hypothesis and imagination. No reduction has been made for sale of small pieces of land, as under Exhibit-42, only an area admeasuring about 13 ares was sold for a sum of Rs. 15,000/-. Thus the computation and the final figure arrived at by the Reference Court is entirely based upon guess work and as such the same should be set aside.

11. Certainly, there is some merit in the contention raised on behalf of the State. It is a settled principle of law that some discount is to be made on account of sale instances relating to small pieces of land

in the case of acquisition of large chunk of land. The lands were acquired for public purpose viz. for Mukane dam which was of great importance and utility to the public at large. Thus, it was expected of the Reference Court to make certain deduction while computing the compensation payable to the Claimants considering the fact that the sale deed Exhibit-42 was in respect of a small piece of land. In the facts and circumstances of the case and keeping in mind the location and potential of the land, it would be just, fair and reasonable to apply deduction at the rate of at least 25 per cent. The object of acquisition is construction of a dam and the land in question is surrounded by different villages. Even if the enhancement at the rate of 10 per cent per annum is stated to be reasonable, then it must be partially set off against the increase sought to be given to the claimants on account of lapse of time between the sale instances and the date of notification. We may also notice that there is nothing on record to prove that there was any increasing trend in the price of the land. To examine this aspect, even the sale instances proved by the respondent-State (Exhibits-140, 141 and 142) can be looked into. These sale instances do not show consistent and substantial increase in the sale price of the lands in question. The claimants themselves have produced Exhibit-

124, the sale deed of 30th May, 1990, wherein again the land from the same village from Gat No. 516 admeasuring 0.4.8 ares was sold for Rs. 6,500/-. Thus the increase is marginal. Keeping in view the fact that various sale instances produced by the claimants relate to small pieces of land, the deduction is necessary and without deduction compensation cannot be determined as per just and fair market value of the land payable to the claimants for acquisition of their respective lands. Exhibit-124 has been rejected by the learned Reference Court on the ground that it relates to a very small piece of land i.e. only 0.4.8 ares. The reasoning recorded by the Court does not suffer from any infirmity. Certainly, it is a small piece of land and except to the extent that it reflects some increase in the sale price of the land the sale instance should be noted only for the limited purpose of noticing the marginal increase in the sale price of the acquired land but that cannot be the sole basis for determining the compensation payable to the claimants. The sale instances produced by the claimants do not show that the lands were purchased for any other purpose except the purpose for which they were being used at the time of registration of sale deeds. In other words, the land was being used only for agricultural purpose. Thus, the potential of the land under the sale deeds was nothing but

agriculture on the date of acquisition. The potential of the acquired land, from the evidence on record, is not materially different. The statement of witness No.2 is hardly of any use to the claimants inasmuch as she claims to have deposed on behalf of everybody. She has stated that the fields in gat No. 810 is a jirayat land and the acquired fields were better located and were better lands than the land purchased by her which is situated at half kilometres away. Nothing material came out in the cross-examination of this witness. The nature of the land being agriculture is established on record. The claim of industrial potentiality is, therefore, not established. Resultantly, the claimants cannot claim much benefit towards the potential of the land because of the intervening period from 1989 to 1994.

12. The learned counsel appearing for the Claimants, while arguing in support of the amount of compensation awarded, stated that this Court had awarded compensation in respect of village Mukane at the rate of Rs. 1,50,000/- per hectare. The said area is adjacent to the acquired land and similar compensation may be awarded in this case as well. This argument is of no help to the claimants. The claimants cannot take advantage of a judgment awarding compensation for acquired land

of an adjacent village. Even if it is so assumed that Village Mukane is an adjacent village, the compensation was awarded on the basis of the evidence recorded in those cases. It is not necessary for the Court to grant similar or higher compensation. In fact, some times it may be difficult even to take into account the judgments of the Reference Court in the case of adjacent villages because they may not be comparable instances in their true perspective. Reference in this regard can be made to the decisions of the Apex Court in (i) *Pal Singh and others* vs. *Union Territory of Chandigarh*, (1992) 4 SCC 400 and (ii) *Karan Singh and others* vs. *Union of India (1997) 8 SCC 186.* In *Pal Singh* (supra), the Supreme Court held as under:

> "No doubt, a judgment of a court in a land acquisition case determining the market value of a land in the vicinity of the acquired lands, even though not inter parties, could be admitted in evidence either as an instance or one from which the market value of the acquired land could be deduced or inferred as has been held by the Calcutta High Court in *H.K. Mallick case, 79 CWN 378* based on the authority of the Judicial Committee of the Privy Council in *Secretary of State for India in Council* vs. *Indian General Steam Navigation and Railway Co. Ltd.*, ILR 36 Cal 967, where the Judicial Committee did refuse to interfere with the High Court judgment in a land acquisition case based on previous awards, holding that no question of principle was involved in it. But what cannot be overlooked is, that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the

acquired land could be inferred or deduced, it must have been a previous judgment of court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land. In the cases on hand, the petitioners who are claimants claiming enhanced compensation for their acquired land have not produced the judgment of the High Court on which they propose to rely for finding the market value of their acquired lands as evidence in their cases, in that they could not have done so for the reason that it was not a judgment then available to them as a previous judgment relating to market value of land in the vicinity."

The Supreme Court in *Karan Singh*' s case (supra) held as under:

"Learned counsel for the appellants then urged that the High Court erroneously discarded Exh.A-11 which was an award in respect of a land at Village Jhilmi Tahirpur on the ground that it was not a previous judgment of the Court. The land comprised in the award was acquired under notification issued under Section 4 of the Act on 27-7-1981. By the said award, the Court awarded compensation @ Rs. 625/- per sq.yd. It has earlier been seen that in the present case the notification issued under Section 4 of the Act was earlier in point of time than the notification issued for acquisition of land comprised in Exh. A-11. There is no quarrel with the proposition that judgments of Courts in land acquisition cases or awards given by the Land Acquisition Officers can be relied upon as a good piece of evidence for determining the market value of the land acquired under certain circumstances. One of the circumstances being that such an award or judgment of the court of law must be a previous judgment. In the case of *Pal Singh v. Union Territory of Chandigarh* it was observed thus:

....

....

> Following this decision, we hold that it is only the previous judgment of a court or an award which can be made the basis for assessment of the market value of the acquired land subject to party relying on such judgment to adduce evidence for showing that due regard being given to all attendant facts it could form the basis for fixing the market value of acquired land."

13. The Punjab and Haryana High Court in Regular First Appeal No. 3147 of 1992 decided on 17th February, 2000, observed as follows:-

> "Learned Counsel for the claimants places heavy reliance upon the judgment of this Court in the case of *The State of Punjab and another vs. Gulzar Singh and others,* RFA No. 2296 of 1993 decided on 25.8.1994 in relation to the lands falling in the revenue estate of village Khera Gajju, Tehsil Rajpura District Patiala. This judgment or the judgment giving rise to the appeal was never placed on record before the learned reference court, while deciding the present case. No application for additional evidence was filed in the present appeal till date. Thus, it would be difficult for the court to rely upon this judgment and consider its evidentiary value in the present case, because it will cause serious prejudice to the interest of the State in the present case, as it will have no opportunity to show by proper evidence whether this judicial instance is a comparable instance and could be made basis for determining the fair market value of the acquired land at the relevant time."

In yet another case, the Punjab and Haryana High Court in RFA No.

882 of 1999 decided on 3rd February, 2000, observed as under.

> "Every case has to be determined on the basis of the evidence on record. The instances of judicial pronouncements have to be kept in mind but they cannot, in law and fact, be instrumental in destroying the other preferential admissible documents produced by the parties on record."

In RFA No. 459 of 1988 decided on 17th February, 1998, the Punjab and Haryana High Court observed as under.

> "It is true that normally similar amount of compensation would be payable to the identical situated landowner and specially when such lands are acquired by the same notification. This principle of law has to be made applicable within four corners of law and cannot be achieved by a power which otherwise is not vested in the Court."

14. While categorizing the preferential order in which instances are to be considered, the Punjab and Haryana High Court in RFA No. 2436 of 1999 decided on 14th October,1999, observed thus:

> 'Another very important reason for not relying upon these instances is that there is sufficient relevant admissible and direct evidence available on record to determine the fair market value of the land. Sale instances have been provided on record and there are even judgments of the court in relation to the lands in the same revenue estates. It is a settled principle of law that the Court would normally rely upon the direct evidence like sale instances

> which are admissible relevant and comparable and then judicial pronouncements and then other material evidence of the kind afore referred. Therefore, I would not prefer to rely upon these references and would keep them out of the zone of consideration for determining the fair market value of the acquired land on the date of notification. The only purpose that these exhibits are relevant is to show the increasing trend of prices of the acquired properties around the acquired land."

15. In view of the above settled principles of law, we are of the considered view that the claimants cannot derive any advantage from the Division Bench judgment of this Court in the case of *The State of Maharashtra* vs. *Yashwant Kahnu Shirsath*(First Appeal No. 896 of 2005), decided on 19th July, 2007. The claimants would be entitled to get compensation on the basis of what they have proved on record. The instances produced by the Respondents should be relevant and comparable. On the basis of the oral and documentary evidence led by the parties, dealt by us above, now we would proceed to determine the compensation payable to the claimants.

16. Before adverting to the issue of market value and compensation to be awarded, it is worthwhile to consider factors to be considered while determining compensation under Section 23 of the Act

as noticed by a Full Bench judgment of this Court in First Appeal No. 1098 of 2003 and others (*The State of Maharashtra* vs. *Prashram Jagannath Aute)* dated 19th July, 2007,therein it was observed as under:-

> "This has been the consistent view of the Supreme Court as well as the various High Courts that there cannot be any hard and fast rule universally applicable to all cases relating to determination of compensation for the acquired land. It will be essential to refer to the facts of each case and apply considerations contemplated under section 23 of the Act in the light of judgments of the Court while ignoring the factors stated in Section 24 of the Act. In the case of Chimanlal Hargovinddas vs Special Land Acquisition Officer and anr AIR 1988 SC 1652 the Court court stated the principles beyond ambiguity and the court capitualised the factors regulating the discretion of awarding compensation by the court as under:
>
> "Before tackling the problem of valuation of the land under acquisition it is necessary to make some general observations. The compulsion to do so has arisen as the Trial Court has virtually treated the award rendered by the Land Acquisition Officer as a judgment under appeal and has evinced unawareness of the methodology for valuation to some extent. The true position therefore requires to be capsulized.
>
> 4. The following factors must be etched on the mental screen:
>
> (1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.
>
> (2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material

utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act(dates of Notifications under Sections. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors	Minus factors
1. smallness of size.	1. largeness of area.
2. . proximity to a road.	2. situation in the interior at a distance from the road.
3. frontage on a road.	3. narrow strip of land with very small frontage compared to depth
4. nearness to developed area.	4. lower level requiring the depressed portion to be filled up.
5. . regular shape.	5. remoteness from developed

locality.

6. . level vis-a-vis land under cultivation

6. some special disadvantageous factor which would deter a purchaser.

7. special value for an owner of an adjoining property to whom it may have some very special advantage.

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 1000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17)These are general guidelines to be applied with understanding informed with common sense.

....

9. The more serious grievance of the appellant however is that the High Court has depressed the market value excessively in evaluating the land in question at Rs. 7,000

per acre as compared to the land abutting on the Ganeshkhand Road valued at Rs. 20,000 per acre, the land abutting in the interior of Survey No. 86 valued at Rs. 16,000, and land abutting on Pashan Road valued at Rs. 12,000 per acre. A glance at the sketch on the record shows that the appellant's land is situated very much in the interior as compared to the other parcels of land. It is in the midst of large blocks of undeveloped land. A hypothetical purchaser would not offer the same market value for lands with such a situation as lands which are nearer to the developed area and abut on a road or are nearer to a road. The development of lands which are nearer to the developed area and nearer to the road can reasonably be expected to take place much earlier. Only after such lands are developed and construction comes up, the development would proceed further in the interior. It would not be unreasonable to visualize that a considerable time would elapse before development could reach the block of undeveloped land located in the interior. Besides, the land which is situated in the interior does not fetch the same value as the land which is nearer to the developed area and nearer to the road. If a hypothetical purchaser opts to purchase the land situated in the interior in the midst of an undeveloped area, he would doubtless take into account the factor pertaining to the estimated time for development to reach the land in the interior. For, his capital would be unprofitably looked up for a very long time depending on the estimated time required for the development to reach the land in the interior. Meanwhile he would have to suffer loss of interest. It is, therefore, understandable that the land in the interior would fetch much smaller price as compared to the lands situated nearer to the developed locality. More so as all these factors are incapable of precise or scientific evaluation. The valuer has to indulge in some amount of guess work and make the best of the situation. The High Court having accorded anxious consideration to all these factors of uncertainty has arrived at the valuation of Rs. 7000 per acre. Says the High Court in paragraph 51 of the Judgment:

“This brings up for final consideration the plots which we have described as interior plots in all the survey numbers and which do not have a frontage on the roads. A lower price will have to be provided for these plots, since the plot-holders will have to spend moneys for getting water and drainage connections which are given only upto the Municipal Roads. Then again, in our opinion, the interior plots would not be sold at all as long as any of the plots having a frontage on Pashan Road or Baner Road are sold, though once such plots have been disposed of the demand for interior plots would certainly pick up. Here again, it is impossible to be precise in fixing the value; but in our opinion the interior plots may fairly be valued at Rs. 7,000 per acre. As stated earlier, the sales of these plots would commence after all the plots having a frontage on Pashan Road and Baner Road are disposed of i.e. after 12 years, and we may say that those plots would be sold within a period of about 4 years”.

10. It is not possible to find fault with the reasoning or conclusion of the High Court. The High Court was day in and day out engaged in valuation of the lands in different parts of the state and was fully aware of the landscope. There is no yardstick by which the future can be foreseen with any greater degrees of preciseness. The High Court has made the estimate as regards the time lag for development to reach the appellant's land to the best of its judgment. Having taken into account all the relevant factors, the High Court has arrived at the aforesaid determination. And in doing so, the High Court has not committed any error or violated any principle of valuation. It is purely a question of fact and it is not possible to detect any error even in the factual findings recorded by the High Court. In fact the High Court has been extremely considerate and has approached the question of valuation with sympathy and understanding for the land owner. The High Court did not opt for an easy way out by taking the

> view that since there was no comparable instance of undeveloped lands in the interior on the basis of which the valuation of the appellant's land could be made, the Award made by the land Acquisition Officer should remain undisturbed."

17. Improbability of prescribing uniform principles for determination of market value and necessity to refer and decide the cases on the basis of evidence produced, upon giving proper reasoning for the order, was held to be the essence for enhancement of compensation or otherwise, as unreasoned views would not sustain judicial order. The Supreme Court in the case of ONGC Ltd vs Sendhabhai Vastram Patel and ors, (2005) 6 SCC 454 stated as under:

> "While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefor has to be ascertained. Although, ,there exist different modes for arriving at the market value for the land acquired; the best method, however, as is well known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by the deeds of sale. In the absence of any direct evidence on the said point, the court may take recourse to other methods viz. Judgments and awards passed in respect of acquisition of lands made in the same village and/or neighbouring villages. Such a judgment and award in the absence of any other

> evidence like deed of sale, report of expert, and other relevant evidence, however, would have only evidentiary value.
>
> Market value is ordinarily the price the property may fetch in open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.
>
> The amount of compensation cannot be ascertained with mathematical accuracy, A comparable instance has to be identified having regard to the proximity from time angle as well; as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition"

18. We have already noticed that the reliance placed by the Reference Court upon Exhibit-42 cannot be faulted with, despite the fact that it is quite early in point of time to the date of notification issued under Section 4 of the Act i.e. on 2nd February, 1994. No other evidence which was more relevant, comparable and admissible in accordance

with law was available on record. The basis on which the computation has to be determined thus would relate to Exhibit-42. The Reference Court also relied upon previous judgments at Exhibits-132 and 133. These are the judgments in relation to LAR No. 48 of 1997 and LAR No. 588 of 1997. In both these cases, the notification under Section 4 was issued on 2nd February, 1994 and 3rd March, 1994 respectively. Thus, they were relevant for determining the controversy in question and somewhat similar compensation had been awarded by the Reference Court even in those cases.

19. We have already discussed in detail that the Reference Court ought to have applied some deduction while determining the compensation on account of the smallness of the lands sold under sale deed Exh. 42 and keeping in view the purpose for which the land was acquired.

20. We are also of the considered view that it was not necessary for the Court to always grant a fixed percentage of increase or decrease. There cannot be a definite formula of this kind to compute

the fair market value of the land. Each case has to be determined on its own facts and circumstances. The statutory guidelines contained under Section 23 and the various judgments on the subject would guide determination of question of compensation. A Full Bench of this Court in the case of *The State of Maharashtra vs. Prashram Jagannath* Aute (First Appeal No. 1098 of 2003) decided on 19th July, 2007 held that the analytical examination of the principles of law would lead to no other conclusion but that determination of market value of the acquired land has to be done on facts of each case, existing statutory guidelines stated in Sections 23 and 24 of the Act and in the backdrop of judicial pronouncements controlling exercise of jurisdiction under Section 18 of the Act. It was also held that it was not always true that the bagayat land would get double the compensation in comparison to jirayat land. The enunciated principles of law de hors the evidence on record cannot be applied uniformly to every case. The Court has to determine the market value of the land on the date of publication of the notification under Section 4 of the Act on the basis of evidence on record. It is permissible for a Court to apply some amount of guess work if the direct evidence relating to the relevant period is not available on record. Of course, the guess work cannot exceed its permissible limits and thus

reasonable percentage of increase and/or decrease should be provided to arrive at market value to award a reasonable and fair amount of compensation to the claimants. Even if we were to add 10 per cent increase annually as applied by the Reference Court, still certain amount of deduction would have to be made and in the facts and circumstances of the present case we are of the view that 25 per cent deduction on different counts can appropriately be made. There is direct evidence on record to show that the acquired land forms part of different classes of land i.e. Bagayat, jirayat and pot kharab lands. The award made by the Collector itself divides the acquired lands into different classes which has not been questioned by any of the parties before the Reference Court. In this court there is no challenge to such classification even during the course of arguments. Thus, we would proceed on the basis that the entire land acquired from the revenue estate of village Sajegaon falls into the three aforesaid categories which obviously are to be valued differently. Entire irrigated land cultivated through regular source of water like well water etc. essentially must receive higher rate of compensation than jirayat land which in turn would receive higher compensation than the pot kharab land. Again, applying certain amount of guess work, we hold that the market value

of jirayat land being the basic factor for determining compensation, market value of bagayat land would be calculated by giving increase of 25 per cent on market value of jirayat land, while pot kharab land would be given a decrease of 15 per cent from the market value of jirayat land.

21. In view of the above discussion, while allowing the appeals of the State partially, we hold and award the following compensation to the Claimants depending upon the nature of the lands which they own:

Jirayat land: Compensation payable in terms of Exhibit 42 Rs. 1,15,385/- per hectare plus Rs. 53,846/- (10 per cent annual increase on this value for the intervening period 4-7-1989 to 2-2-1994) = Rs. 1,69,231/- minus Rs. 42,307/- (25 per cent aggregate deduction for small piece of land). Thus the total comes to Rs. 1,26,924 per hectare for Jirayat land.

Bagayat land: Rs. 1,26,924/- (market value of Jirayat land) plus Rs.

31,731/- (25 per cent of market value of Jirayat land) = Rs. 1,58,655/- . Thus the total market value for Bagayat land comes to Rs. 1,58,655/- per hectare.

Pot kharab land Rs. 1,26,924/- (market value of Jirayat land) minus Rs. 19,038/- (15% market value of jirayat land) =Rs. 1,07,886/-. Thus, market value of Pot Kharab land is Rs. 1,07,886/- per hectare.

Claimants would also be entitled to statutory benefits of Section 23 (2) and 23 (1A) of the Act. The claimants shall also be entitled to interest on the enhanced amount in terms of Section 28 of the Act.

22. In view of the above, nothing survives in Civil Application Nos. 2050 to 2129 of 2007 and the same are accordingly disposed of.

23. M/s. Godawari Marathwada Irrigation Development Corporation has filed Civil Application Nos. 2631 of 2007 to 2710 of 2007 in all the above Appeals for being impleaded as party and heard on merits. The learned counsel appearing for the applicant stated that

they did not pray for remand of the matter and do not wish to lead any further evidence. They argued the matter on the existing records and invited the judgment of the Court. The Applicants have already been heard on merits. Consequently all Civil Applications are allowed.

CHIEF JUSTICE

D.Y. CHANDRACHUD, J.